

SECRETEXPLANATION OF DRAFT NON-PROLIFERATION TREATY ARTICLES

The attached draft text of various articles of a non-proliferation treaty is based on concepts which were first clarified during the ENDC and contains formulations which emerged from US-Soviet discussions during the UNGA. We have made it clear that we were unable to agree on any language prior to full consultation with our allies. The United States has accordingly not agreed to these possible formulations. Although Soviets have refrained from indicating their final agreement, we believe on the basis of our bilateral talks that they would find them acceptable.

PREAMBLE

No text of the preamble has been supplied because there was not time in our discussions with the Soviets to elaborate a complete draft. However, the Soviets expressed preference for a relatively simple preamble which, in addition to the customary introductory clauses, would express intention of the parties to achieve the cessation of the nuclear arms race and a further easing of international tensions.

ARTICLES I AND II

1. In talks with the Soviets, it has been clearly understood that the non-proliferation treaty deals only with what is prohibited and not with what is permitted. Accordingly these articles (a) would not prohibit NATO nuclear consultation and planning or the Permanent Committee established for this purpose; (b) would not disturb existing bilateral arrangements for deployment of nuclear weapons within allied territory as these arrangements do not involve any transfer of warheads or control over them

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up to the point where a decision to go to war is made, at which time the treaty would no longer be controlling; (c) would have no bearing on the decision of NATO allies to go to war; (d) do not deal with the transfer of nuclear delivery vehicles, provided there was no transfer of nuclear weapons or control over them; (e) would not bar succession by a new federated European state to the nuclear status of one of its former components. Such succession would be automatic and no act of "transfer" would be involved. Since the treaty does not prohibit consolidation of states and does not require destruction of any nuclear weapons, it must permit creation of federated European state with its own nuclear weapons. Short of such succession, the draft would bar transfer (including ownership) of nuclear weapons or control over them to a new multilateral or other entity. (NOTE: It should be noted that the language of Articles I and II is derived from and consistent with US atomic energy legislation, a point we have stressed to the Soviets and which reinforces our interpretations. The above interpretations were covered in varying degree in discussions with the Soviets as these questions arose during our bilateral talks. We also expect that they will emerge in the course of Senate Committee Hearings when the treaty is submitted to the United States Senate. They will thus form part of both negotiating history and the legislative record, but we do not expect the Soviets to endorse all of them explicitly and certainly not publicly. Indeed, we should anticipate that various arrangements permitted according to the above interpretations may continue to come under attack in Soviet propaganda. However, we believe the Soviets will have no legitimate grounds for alleging that they would constitute violations of the non-proliferation treaty.)

2. These articles prohibit "other nuclear explosive devices" as well as nuclear weapons because of the inescapable technical fact that the technology for making such devices would be essentially indistinguishable from

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that of nuclear weapons and because such devices could be adapted for use as weapons. If and when peaceful applications of nuclear explosives that are permissible under test ban treaty limitations prove technically and economically feasible, and are available for practical applications in the countries which possess them, the United States believes that such states should make them available at minimum cost to other states as part of an international nuclear explosive service for peaceful applications. The service would involve performing the desired detonation under appropriate international auspices, with the nuclear device remaining under the custody and control of the supplying state.

3. Article I is a draft which the Soviets also have. Based on our talks, we believe they are prepared to agree to it. Article II is derived directly from Article I. The Soviets do not have this article but we believe they would accept this formulation.

ARTICLE III

No draft Article III has been provided because we have not resolved the issue of the type of safeguards clause we would like to see in the treaty. As we stated at the ENDC, we are considering a safeguards clause stronger than the hortatory language in the draft previously made public at the ENDC. It would specify IAEA safeguards. Although this would not involve any discrimination among non-nuclear-weapon states, we recognize this approach presents a problem for EURATOM. However, the only alternative would probably be to have no effective safeguards clause at all because we have clear indications that the Soviets are not prepared to accept any clause which directly or indirectly endorses EURATOM safeguards or which applies safeguards to nuclear powers. The choice which must be made involves an opportunity to achieve safeguards throughout the world, not just in EURATOM countries and the few other non-communist countries which have accepted IAEA safeguards. We hope to suggest a concrete formulation in the near future.

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ARTICLE IV

The provisions for amendments in paragraphs 1 and 2 are derived from the limited test ban treaty. The review clause in paragraph 3 is derived from a clause in the US draft non-proliferation treaty tabled at the ENDC. It differs in that the provision for a conference is automatic and for the stated purpose of reviewing the operation of the treaty "with a view to assuring that the purposes and provisions of the Treaty are being realized". This increased emphasis on review is for the purpose of protecting the interests of the non-nuclear-weapon powers. It will provide an opportunity to assess whether the treaty is accomplishing its purpose of facilitating nuclear disarmament and easing international tensions.

The treaty provision for review after five years would not provide for termination at that time and any amendments proposed as a result of review would require the votes of a majority of parties including all nuclear-weapon Parties. Withdrawal, however, would be possible at any time pursuant to the withdrawal clause (Article VI).

ARTICLE V

Article V deals with signatures and entry into force. It is derived from comparable language contained in the limited test ban treaty and in the non-proliferation treaty drafts tabled at Geneva. The Depositary Governments (para. 2) would be nuclear-weapon-states as in the case of the limited test ban treaty. We have not expressed a view on the precise number of states which should ratify before the treaty goes into force (para. 3) but we believe it should be a fairly large number.

ARTICLE VI

The withdrawal clause is also derived from the limited test ban treaty, but it contains the important modifications urged by our allies and earlier embodied in the US draft non-proliferation treaty tabled at Geneva.

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